IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, V. BOSTON & MAINE CORPORATION, BNZ MATERIALS, INC., and MASSACHUSETTS BAY TRANSPORTATION AUTHORITY, Defendants.	Civil Action No.

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting on behalf of and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") 42 U.S.C. §§ 9606 and 9607. The United States seeks injunctive relief requiring defendants to perform the response actions selected in EPA's Record of Decision for Operable Unit 3 at the Iron Horse Park Superfund Site (the "Site") dated September 30, 2004. The United States also seeks to recover certain costs incurred or to be incurred by the United States in

connection with the release or threatened release of hazardous substances into the environment at or from the Iron Horse Park Superfund Site located in North Billerica, Massachusetts.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and over the Defendants pursuant to Sections 106(a), 107(a), and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a), and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this judicial district pursuant to Sections 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a), 9613(b), and 28 U.S.C. §§ 1391, because the releases or threatened releases of hazardous substances which gave rise to the claims in this action occurred in this district.

DEFENDANTS

4. Defendant Boston & Maine Corporation ("B&M") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at Iron Horse Park, Billerica, MA 01862. At relevant times, B&M owned and operated portions of the Site, and B&M is the current owner of portions of the Site.

5. Defendant BNZ Materials, Inc. ("BNZ") is a corporation organized and existing under the laws of the State of Delaware and maintains a place of business at Iron Horse Park, Billerica, MA 01862. BNZ is the owner and operator of a portion of the Site.

6. Defendant Massachusetts Bay Transportation Authority ("MBTA") is a public corporation established under the provisions of Massachusetts General Laws, Chapter 161A. Its principal place of business is located at Ten Park Plaza, Boston, Massachusetts 02116. MBTA is the owner and operator of a portion of the Site.

7. Each of the Defendants is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

FACTUAL BACKGROUND

8. The Site is located in North Billerica, Massachusetts, and consists of approximately 553 acres. The Site is an industrial park which includes manufacturing and rail yard maintenance facilities, open storage areas, landfills, and wastewater lagoons. The Site is approximately 8 miles south of the New Hampshire border.

9. Since approximately 1913, the Site has been used for industrial purposes. The Site is surrounded by upland areas on the southeast side, including several small forested hills near Pond Street, and low-lying wetland areas on the western, northern, and northeastern sides of the Site.

10. In 1984, the Site was listed on the National Priorities List ("NPL") promulgated by EPA pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. part 300, App. B. An Action Memorandum was signed by EPA on June 26, 1984 for a removal action under CERCLA to cap the Johns-Manville Asbestos Landfill located on the Site.

11. Following the completion in 1987 of the Phase IA Remedial Investigation, the Site was divided into three Operable Units: the B&M Wastewater Lagoons (Operable Unit 1), the Shaffer Landfill (Operable Unit 2), and the remaining source areas of concern (Operable Unit 3).

12. In September 1988, EPA issued a Record of Decision ("OU1 ROD") which selected the remedy for the B&M Wastewater Lagoons. The OU1 ROD selected bioremediation to address contamination in soil and sediment. The remedy for Operable Unit 1 was later modified to utilize off-site asphalt batching. The remedial action for Operable Unit 1 was

performed by private parties pursuant to a Consent Decree entered by this Court in United States of America and Commonwealth of Massachusetts v. Boston and Maine Corporation et al., Civil Action Nos. 90-1171WD and 90-11710-WD. The Operable Unit 1 remedy was completed in 2003.

13. On June 27, 1991, EPA issued a Record of Decision ("OU2 ROD") which selected the remedy for addressing the contamination at the Shaffer Landfill Operable Unit. The OU2 ROD, inter alia, requires construction of a cap for the Shaffer Landfill portion of the Site and leachate collection and disposal. The remedial action for Operable Unit 2 was performed by private parties pursuant to a Consent Decree entered by this Court in United States and Commonwealth of Massachusetts v. Shaffer, et al., Civil Action Nos. 95-10023MLW and 95-10027MLW. Construction of the remedy for Operable Unit 2 was completed in 2003. Operable Unit 2 is currently in the Operation and Maintenance phase.

14. In 1997, EPA issued a Supplemental Remedial Investigation Report ("RI") addressing Operable Unit 3 ("OU3"). The RI documented the presence of various compounds in groundwater, surface water, soils and/or sediments at the Site, including: 1,2-dichloroethane, 1,1-dichloroethene, trichloroethene, bis(2-ethylhexyl)phthalate, lead, benzene, arsenic, lead, thallium, and nickel.

15. The compounds referred to in Paragraph 14 above are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

16. In May 2004, EPA issued a Feasibility Study Report. In the Feasibility Study Report, EPA determined that seven source-control Areas of Concern ("AOCs") should be addressed in the Record of Decision for OU3, and that Site-wide surface water, groundwater, and

sediments would be designated as Operable Unit 4 and addressed in a future Record of Decision.

17. On September 30, 2004, EPA issued the Record of Decision for OU3 ("OU3 ROD"), which set forth the selected remedy for the seven AOCs.

18. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

19. Hazardous substances have been treated or disposed of at the Site. Such hazardous substances have been found at the Site.

20. There have been and continue to be "releases" and "threatened releases" of "hazardous substances" within the meaning of Sections 101(14) and (22), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14) and (22), and 9607(a), into the environment at and from the Site.

21. As a result of the release or threatened release of hazardous substances at and from the Site, the United States has incurred "response costs" related to Operable Unit 3, as defined in Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a), of at least $5 million, including prejudgment interest. The United States will continue to incur response costs in connection with Operable Unit 3 of the Site.

22. The response actions taken by the United States related to Operable Unit 3, and the resulting response costs incurred by the United States, in connection with Operable Unit 3 of the Site are not inconsistent with the National Contingency Plan, as set forth in 40 C.F.R. Part 300.

23. Defendants have not reimbursed the United States for any of the response costs the United States has incurred for response actions taken with respect to Operable Unit 3 of the

Site.

FIRST CLAIM FOR RELIEF

24. The statements and allegations set forth in paragraphs 1 through 23 are realleged and incorporated herein.

25. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides:

> Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this Section--
>
> (1) the owner and operator of a vessel or facility,
>
> (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
>
> (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and
>
> (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for--
>
> > (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan . . . .

25. Defendants B&M, BNZ, and MBTA are each an "owner or operator" of the Site within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and are liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), for response costs incurred and to be incurred by the United States for the Site.

26. Defendant B&M was an "owner or operator" of the Site within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), at the time of disposal of hazardous substances, and are liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(1), for response costs incurred and to be incurred by the United States for the Site.

SECOND CLAIM FOR RELIEF

27. The statements and allegations set forth in paragraphs 1 through 26 are realleged and incorporated herein.

28. Section 106(a) of CERCLA, 42 U.S.C. § 96096(a), provides in relevant part:

> [W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare of the environment because of an actual or threatened release of a hazardous substance from a facility, he may . . . secure such relief as may be necessary to abate such danger or threat . . . .

29. The President, through his delegate, the Regional Administrator of EPA Region I, has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of a release or threatened release of a hazardous substance at and from the Site.

30. Section 106(a) authorizes the United States to bring an action to secure such relief as may be necessary to abate the danger or threat at the Site.

31. EPA has determined that the remedy selected in the OU3 ROD is necessary to abate the danger or threat at the Site.

32. The Defendants are liable to undertake the remedial action identified in the OU3 ROD, which actions EPA has determined are necessary to abate the danger or threat at the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully prays that this Court:

1. Order Defendants to perform the remedial action for Operable Unit 3 for the Iron Horse Park Superfund Site selected by EPA in the Record of Decision dated September 30, 2004;

2. Order Defendants to reimburse the United States for all response costs incurred by the United States in connection with Operable Unit 3 of the Site, plus interest;

3. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

RONALD J. TENPAS
~~Acting~~ Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

SUSAN M. AKERS
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044
(202) 514- 4831